

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:**

**T-MOBILE NORTHEAST, L.L.C. AND SPENCERVILLE FREE METHODIST CHURCH,**

Petitioners

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Sean Hughes, Esquire

Attorney for the Petitioner

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Board of Appeals Case No. S-2708  
(OZAH Referral No. 08-04)

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Before: Françoise M. Carrier, Hearing Examiner

**HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION**

The above-cited petition seeks permission to erect a telecommunications facility (more precisely, a cell phone tower) on the property of the Spencerville Free Methodist Church, located at 2100 Spencerville Road, Spencerville, Maryland. The undersigned Hearing Examiner submitted a report and recommendation on this case to the Board of Appeals on July 24, 2008, recommending approval of the petition on grounds that it satisfied all of the general and specific requirements for the use and would have no inherent or non-inherent adverse effects that would justify denial. The Board of Appeals remanded the case to the Hearing Examiner by Resolution adopted September 10, 2008 and effective October 27, 2008. In its resolution, the Board requested additional factual information in response to the following three questions:

1. Is the property next door to the special exception listed on the State Historic Register?
2. If the property is so listed, is there a requirement for separate notice to the Historic Preservation Commission of the special exception application, and an opportunity to comment on the application?
3. If the property is listed on the State Historic Register, would the Hearing Examiner change her analysis of the inherent and non-inherent adverse effects?

The Hearing Examiner, via emails beginning on October 28, 2008, requested that Technical Staff at the Maryland-National Capital Park & Planning Commission ("MNCPPC") provide answers to questions one and two above. See Exs. 51, 52 and 54. On November 26, 2008, Counsel for the

Applicant provided a copy of a brief memorandum that was prepared by MNCPPC Historic Preservation Staff on October 15, 2007, which states that although staff was concerned “about the height of the pole, its location, and the adverse visual impact it will have on the adjacent historic resource, the subject property is not designated historic and therefore the Historic Preservation Commission will not review the proposed installation.” See Ex. 53(a). Technical Staff submitted a copy of the same memorandum on December 8, 2008, and an additional reply in an email that was sent on December 9, 2009 but reached the Hearing Examiner on December 23, 2008. See Exs. 55 and 56. The latter email states that the property adjacent to the subject site is listed on the Montgomery County Master Plan for Historic Preservation and is eligible for the National Register for Historic Places, and that Staff is not aware of any separate notice requirements in addition to providing notice to Historic Preservation Staff at MNCPPC. In response to an inquiry from the Hearing Examiner, a member of the County Council legislative staff submitted an email describing the role of MNCPPC Historic Preservation Staff, who also serve as staff to the Historic Preservation Commission (“HPC”). See Ex. 57.

The Hearing Examiner reopened the record in this case on January 8, 2009 to accept into it the submissions described above from Technical Staff, Council staff and the Applicant. Following a public comment period and a comment period for the Applicant, the record closed on January 29, 2009.

The memorandum from Council staff explains that although the HPC is part of the executive branch of the county government, the County contracts with MNCPPC to provide staffing for the HPC. See Ex. 57. Accordingly, the memorandum from MNCPPC Historic Preservation Staff demonstrates that staff of the HPC reviewed this case and determined that based on HPC policy, the HPC would not review the present application because the subject property – the property on which the monopole is proposed to be installed – is not designated historic. There may be cases in which the impact on an adjacent historic property is serious enough to warrant review by the HPC, due to the potential for detrimental impact on the environmental setting of a historic property. Due to the minor impacts of the

use proposed in this case, however, the Hearing Examiner sees no reason to request review by the HPC itself, contrary to the policy stated by its staff.

In answer to the Board of Appeals' first two questions, the record on remand indicates that the property next door to the subject site is listed on the County's Master Plan for Historic Preservation, but not on the State Historic Register, and that staff of the HPC reviewed the application and determined that it was not eligible for HPC review. In answer to the Board of Appeals' third question, adjacency to a historic property could be considered a non-inherent characteristic of a telecommunications facility, whether the property is listed on the State Historic Register or the County Master Plan for Historic Preservation. In the present case, the proposed tower would have a flagpole design concealing the antennas inside the pole, would not carry an actual flag, and would be surrounded at its base by a wooden fence. Thus, the visual impact would be limited to a fenced area with a tall pole sticking out. In view of the existing tall trees on the property, the Hearing Examiner remains persuaded that the proposed installation would not have an adverse impact on the adjacent historic property – or the general neighborhood – sufficient to warrant denial of the application. Accordingly, the Hearing Examiner recommends approval of the application with the conditions recommended in the original report and recommendation.

Dated: February 8, 2009

Respectfully submitted,

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Françoise M. Carrier  
Hearing Examiner